

Alfred Davis, Receiver of the
Medina County Mutual Fire
Insurance Company - Plff
Thomas Atkinson - Dft
County of Carroll Ohio
Salem County
at Law

1st Statement - The said Thomas Atkinson Answered
- and for answer to the petition of the plffs
says, he does not owe the plaintiff the said sum
of three dollars and forty nine cents, in said petition men-
tioned, and for which judgment is demanded against him
nor any part thereof: nor any ^{other} sum whatever: and
denies that the plaintiff hath any claim or demand
against him whatever.

Second Statement of Defense - The said Answerer does deny
that the plaintiff was at the time ^{his manager} in the petition stated
or at any other time, legally and duly appointed
Receiver of all ^{or any part} of the assets of the said Insurance Company
and he denies that the plaintiff has power or authority
to collect by suits or payments made upon the ^{said} premium
notes in the petition mentioned in his own
name, or otherwise.

Third Statement of Defense - The Answerer denies that
all of the before, to pay which payments were made
upon said premium notes as in the petition mentioned
occurred between the date of the ~~issuance~~ ^{issuance} of said policy
issued to the Answerer ^{the expiration of six years after the} and the expiration of the term
thereof which is known the ^{second} day of June 1846 and
the first day of July 1851 inclusive as in said petition
in that behalf stated.

4th Statement - The said Answerer denies that the

Directors of said Company, on the said Second Day of August 1854, made a legal and valid agreement upon the said premium note of the defendant and he also denies that the said note was at that time in force against him or liable to said agreement. And he also denies that he was then a member of said Company, & he denies that the publication of said notice of said agreement as in said petition stated, was due legal notice to him thereof.

5th Statement The defendant further says, that long before the said Second Day of August 1854, and before the making of said agreement in the petition mentioned, the said Company determined, and agreed, from time to time, against him upon said premium note, as a member of Company his full proportion of the loss (including the expense of adjusting, collecting (paying the same) for the payment of which the said agreement in the petition mentioned was made: and that in pursuance of which agreement so made against him he paid to the said Company ~~the~~ the amounts thereof repeatedly in full.

Statement No. 6. The defendant further says that the said policy of insurance, in the petition mentioned, his term of insurance therein did, expire by limitation, the first day of said act of incorporation on the first day of July of July 1851. He admits that previous to the issuing of said policy, & during its continuance, said Company issued a great number of policies, and received deposits notes to a large amount: and that losses by fire were sustained by persons insured by said Company: And he says that by section 1 of said act of incorporation it is provided among other things provided - "That the directors shall after

- 1 receiving notice of any loss, or damage by fire, sustained by any
- 2 member, or ascertaining the same, or after the rendition of any
- 3 judgment as aforesaid against said Company for said loss or damage,
- 4 settle, or determine the sum to be paid by the several members
- 5 thereof as their respective proportions of said loss, and publish
- 6 the same in due manner, as they shall see fit, or as the law
- 7 shall have prescribed: and the sum to be paid by each member
- 8 shall always be in proportion to the original amount of
- 9 his deposit note, or notes, and shall be paid to the treasurer
- 10 within thirty days next after the publication of said
- 11 notice. And it is by said section further provided - "that
- 12 if any of the members of said Company, shall neglect for thirty
- 13 days after the publication of such notice, to pay the sum so
- 14 assessed upon him as his proportion of such loss, the directors
- 15 may sue for and recover the amount of such assessment
- 16 with ten per cent ~~and~~ ⁱⁿ addition thereto,
- 17 or that the directors of said Company shall have power, to sue
- 18 for and recover the ^{whole} amount of the deposit note of such
- 19 delinquent member: And that the money thus collected
- 20 ~~shall~~ ^{shall} remain in the treasury of the Company, subject to
- 21 the payment of such losses, or expenses, as then had or
- 22 should thereafter occur. And that by the 5th section
- 23 of said act it is enacted among other things, that -
- 24 "At the expiration of the term of insurance, the said note,
- 25 or such part of the same as shall remain unpaid after
- 26 deducting all losses and expenses occurring during
- 27 said term shall be relinquished and given up to the
- 28 signer thereof." - And by Section Second of said act
- 29 it is provided that ^{every} ^{or person} who shall at any time
- 30 become interested in said Company by insuring therein
- 31 & also their respective heirs, executors, administrators & assigns
- 32 continuing to be insured therein as ^{hereafter} ^{provided} shall be deemed to be members thereof for during
- 33 the time specified in their respective policies and longer

and shall at all times be concluded thereby by the provisions
of this act" - And by Section 11 of said act it is among
other things enacted: That any member of said Company shall
be, or be held to be, obliged to pay his portion of all losses &
expenses happening, or accruing in or by said Company;
also that - the said Company shall have a lien on the
building, the intent of the assured in the bond on
which the same stand during the continuance of said
policy.

The Defendant avers that from and after the
first day of July 1854, he has not been, nor the Commenant
of said act was not a member of said Company; And he
further says that said Company did from time to time
during the said term of insurance, settle & determine
the sums to be paid by the Defendant, and other members
of said Company, for all of the losses & damages by fire,
which were sustained by persons insured therein during
said term in the petition mentioned; and therefore
made assessments upon the persons insured accordingly;
~~And he avers that~~ And that said several assessments so
made against the Defendant, were each in proportion
to his said apportionment and were his full & just proportion
of each and all of the said losses, damages, and the expenses
aforesaid, of collecting the said assessments; And that he
did pay to said Company long before the Commenant
of this action, each and all of said assessments so made upon
him, in full, as ^{he} was by said Company and said act
of incorporation required.

He further says that the said pretended assessment
made on the second day of August 1854, ^{upon} him, was
for the same losses, for the payment of which he had
been previously assessed; and of which he had in pursuance
of such previous assessments paid his full proportion.

And he further sets forth information and belief that
the said Company, wrongfully appropriated money,
collected of the Defendant and others, during the continuance
of said policy, to pay losses that occurred ~~for~~ before the
date of paying thereof.

The Defendant further says that neither
the said Company, nor the Plaintiff, has collected
or sought to collect by action at law, all of the
said assessments made by said Company from time
to time as aforesaid during the said term of insurance
in the petition mentioned; but as the Court has
hitherto wholly neglected, to collect, a large portion
of the said assessments, made ^{as of right} against said persons,
whose names he must state for want of information,
during the continuance of the said policy; and of ~~losses~~
~~losses which occurred during the continuance of~~
~~which losses were and are the same in the petition~~
~~mentioned.~~

And he further says that the said
pretended assessment made upon him on the second
day of August 1854, as in the petition mentioned, was
not authorized by the said act of incorporation, and
did not bind him; or confer upon the Plaintiff, the
right to bring maintain this action as he is advised.

He also denies that said Company continued to insure
property, and to business until November 1854, but as the
Court there has long before that time ceased to
insure property as he is informed & believes.

C. J. Komer & B. A. Little
Attys for D

